UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

FEB - 4

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

James D. Crane, Owner & CEO
Tonawanda Coke Corporation
3875 River Road
Tonawanda, New York 14150-6507

RE: Compliance Order for Violations of the Clean Air Act
EPA Index No.: CAA-02-2010-1002

Dear Mr. Crane:

The United States Environmental Protection Agency (EPA) issues the enclosed Compliance Order (Order) to Tonawanda Coke Corporation (TCC), pursuant to Section 113(a)(1) of the Clean Air Act (Act), 42 U.S.C. § 7413(a)(1), for violations that occurred at its coke facility located in Tonawanda, New York (Facility). The Order asserts that TCC failed to comply with requirements in 6 N.Y.C.R.R. Part 214, entitled "By-product Coke Oven Batteries," which are approved by EPA into the New York State Implementation Plan, and which are included as federally enforceable conditions in the Facility's title V operating permit.

The Order requires TCC to take actions to demonstrate and ensure compliance with the requirements referred to above. As stated in the Order, if you wish to request a conference with EPA to discuss the Order, you may do so in writing within ten (10) days of your receipt of the Order. If you have any questions, or would like to schedule the conference provided for in the Order, please contact Erick Ihlenburg, Assistant Regional Counsel, at (212) 637-3250.

Sincerely,

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency – Region 2

Enclosure

cc: Mr. Mark L. Kamholz, Manager—Environmental Compliance
Tonawanda Coke Corporation
3875 River Road
Tonawanda, New York 14150-6507

Mr. Robert J. Stanton, Director
New York State Department of Environmental Conservation
Division of Air Resources
Bureau of Stationary Sources
625 Broadway, 2nd Floor
Albany, New York 12233 - 3254

Ms. Colleen McCarthy, Senior Counsel
New York State Department of Environmental Conservation
Bureau of Air Resources
625 Broadway, 14th Floor
Albany, New York 12233 - 5500

Mr. Larry Sitzman, Regional Air Pollution Control Engineer
New York State Department of Environmental Conservation – Region 9
Division of Air Resources
270 Michigan Avenue
Buffalo, New York 14203 - 2999

Ms. Maureen Brady, Associate Counsel—Legal Affairs
New York State Department of Environmental Conservation
Region 9
270 Michigan Avenue
Buffalo, New York 14203 - 2999

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

Tonawanda Coke Corporation
Tonawanda, New York

Respondent

COMPLIANCE ORDER

CAA-02-2010-1002

In a proceeding under Section 113(a) of the
Clean Air Act, 42 U.S.C. § 7413(a)

Statutory Authority

The United States Environmental Protection Agency (EPA) Region 2 Director of the Division of Enforcement and Compliance Assistance (DECA) issues this COMPLIANCE ORDER (Order), pursuant to the Clean Air Act, 42 U.S.C. § 7401 et seq. (the Act or CAA), Section 113(a), 42 U.S.C. § 7413(a), to Tonawanda Coke Corporation (TCC or Respondent), the owner and/or operator of a by-product coking facility (Facility) located at 3875 River Road, Tonawanda, New York. Section 113(a) of the Act authorizes EPA to issue compliance orders requiring persons to comply with the requirements of an applicable implementation plan or permit, at any time after the expiration of 30 days following the date of issuance of a notice of the violation of such requirements. The authority to find violations and issue compliance orders is delegated to the Director from the EPA Administrator, through the Regional Administrator.

Statutory, Regulatory and Permitting Background

1. Section 109 of the Act directs EPA to promulgate regulations establishing primary and secondary national ambient air quality standards (NAAQS) for each air pollutant for which air quality criteria have been issued pursuant to Section 108 of the Act (criteria pollutants).

2. Pursuant to Section 109 of the Act, EPA promulgated the NAAQS at 40 C.F.R. Part 50.

3. Section 110 of the Act provides that, among other things, after promulgation of a NAAQS under Section 109 of the Act for any criteria pollutant, each state shall adopt a plan that provides for the implementation, maintenance and enforcement of such NAAQS in each air quality control region (or portion thereof) in that state. These plans, once approved by EPA, are referred to as state implementation plans (SIP).

4. Section 110 provides that, among other things, each SIP submitted to EPA for approval must include enforceable emission limitations and other control measures, means or techniques as may be necessary or appropriate to meet the applicable requirements of the Act; must include a program to provide for the enforcement of such control measures; and must require, as may be prescribed by EPA, the installation, maintenance and replacement of equipment, and the implementation of other necessary steps, to monitor emissions from stationary sources.

5. To meet the requirements of Section 110 of the Act, on August 23, 1994, New York State adopted the current 6 N.Y.C.R.R. Part 214, entitled "By-Product Coke Oven Batteries" (Part 214), which became effective 30 days after its adoption.

6. On July 20, 2006, EPA approved the current Part 214 into the New York SIP, making the requirements in Part 214 federally enforceable. 71 Fed. Reg. 41,163; 40 C.F.R. § 52.1679.

7. Section 214.1(b)(1) of Part 214 defines "by-product coke oven battery" as a process for the destructive distillation of coal and separation of gaseous and liquid distillates from the carbon residue or coke, which includes ovens, charging systems (including larry cars, jumper pipes, charging conveyors from coal storage and or weigh bins), auxiliary gas collection systems, heating systems and flues, pushing systems, door machines, mud trucks, quench cars, quenching systems, desulfurization systems, sulfur recovery units, waste heat stacks and air cleaning devices or control equipment (including oven patching equipment, door hoods, sheds and other hoods either movable or stationary and with or without water sprays).

8. Section 214.5(a) of Part 214 provides that a person may not operate a wet quench tower of a coke oven battery unless it is equipped with a baffle system designed to effectively reduce particulate emissions during quenching.

9. Section 214.5(b) of Part 214 provides that the total dissolved solids concentration of any quench tower make-up water must not exceed 1,600 milligrams per liter (mg/l), except as provided in Section 214.5(c) of Part 214.

Section 214.5(b) further provides that, among other things, compliance with the 1,600 mg/l limit will be determined by taking the arithmetic average of the total dissolved solids concentrations of each of four samples of make-up water obtained at 15-minute intervals.

10. Section 114(a)(1) of the Act authorizes EPA to require owners and operators of emission sources to provide information regarding such sources, establish and maintain records, make reports, sample emission points, and to install, use and maintain such monitoring equipment or methods, in order to determine whether any person is in violation of the Act or to carry out any provision of the Act (except the provisions of subchapter II of the Act).

11. Section 302(e) of the Act defines the term "person" as an individual, corporation, partnership, association, state municipality, political subdivision of a state, and an agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

12. Section 501 of the Act defines the term "major source" as any stationary source (or any group of stationary sources located within a contiguous area and under common control) that is a major source as defined in either Section 112 of the Act, Section 302 of the Act or part D of subchapter I of the Act.

13. Section 502(a) of the Act provides that after the effective date of any permit program approved or promulgated pursuant to title V of the Act, it shall be unlawful for any person to violate any requirement of a permit issued under title V of the Act or to operate a title V affected source, including a major source or

any other source (including an area source) subject to standards or regulations under Section 112 of the Act, except in compliance with a permit issued by a permitting authority under title V of the Act.

14. Section 502(d) of the Act requires each State to develop and submit to the Administrator a permit program meeting the requirements of title V of the Act.

15. Pursuant to Section 502(e) of the Act, EPA maintains its authority to enforce permits issued by a State under the New York State title V permit program, approved by EPA under title V of the Act.

16. Section 503(a) of the Act provides that any source specified in Section 502(a) of the Act shall become subject to a title V permit program and shall be required to have a title V permit to operate.

17. Section 503(b)(2) of the Act provides that the regulations promulgated pursuant to Section 502(b) of the Act shall include requirements that the permittee periodically (but no less frequently than annually) certify that the facility is in compliance with any applicable requirements of the title V permit, and promptly report any deviations from permit requirements to the permitting authority.

18. Section 504(a) of the Act directs that each title V permit include enforceable emission limitations and standards, a schedule of compliance, a requirement that the permittee submit to the permitting authority, no less often than every 6 months, the results of any required monitoring, and any such conditions as are necessary to assure compliance with applicable requirements of the Act, including the requirements of the applicable implementation plan.

19. In accordance with Section 502(d)(1) of the Act, New York State developed and submitted 6 N.Y.C.R.R. Chapter III, Part 201 (the New York Title V Operating Permit Program), to meet the requirements of title V of the Act and 40 C.F.R. Part 70, promulgated pursuant to Section 502(b) of the Act.

20. EPA granted interim approval of the New York State (NYS) Title V Operating Permit Program on December 9, 1996, 61 Fed. Reg. 57589 (Nov. 7, 1996), and granted full approval to the program on February 5, 2002, 67 Fed. Reg. 5216 (Feb. 5, 2002).

21. 6 N.Y.C.R.R. § 201-6.5(a)(2), a provision in the NYS Title V Operating Permit Program, requires that the permitee comply with all conditions of the title V facility permit and provides that any noncompliance constitutes a violation of the Act and is grounds for enforcement action.

22. 6 N.Y.C.R.R. § 201-6.5(c)(3), a provision in the NYS Title V Operating Permit Program, requires that each title V permit incorporate all applicable federal reporting requirements, which must include, among other things, the following:

    (i) submittal of reports of any required monitoring at least every 6 months; and

    (ii) notification and reporting of permit deviations and incidences of noncompliance stating the probable cause of such deviations, and any corrective actions or preventive measures taken.

23. 6 N.Y.C.R.R. § 201-6.5(e), a provision in the NYS Title V Operating Permit Program, requires that each title V permit include, among other things, each of the following:

(1) the frequency, not less than annually or more frequent periods as specified in the applicable requirement or by the department, of submissions of compliance certifications;

(2) a means for assessing or monitoring the compliance of the source with its emission limitations, standards, and work practices; and

(3) a requirement that the compliance certification include the following:

(i) the identification of each term or condition of the permit that is the basis of the certification;

(ii) the compliance status;

(iii) whether compliance was continuous or intermittent;

(iv) the method(s) used for determining the compliance status of the facility, currently and over the reporting period;

(v) such other facts as the department shall require to determine the compliance status of the facility; and

(vi) all compliance certifications shall be submitted to the department and EPA and shall contain such other

provisions as the department may require to ensure compliance with all applicable requirements.

Findings of Fact

24. Respondent owns and operates a coke facility, located at 3875 River Road in Tonawanda, New York, which utilizes a process for the destructive distillation of coal and separation of gaseous and liquid distillates from the carbon residue or coke, and which includes ovens, charging systems, auxiliary gas collection systems, heating systems and flues, and pushing systems, among other things.

25. On April 30, 2002, the NYS Department of Environmental Conservation (NYSDEC) issued TCC a title V Operating Permit for the Facility, Permit ID # 9-1464-00113/00031, which has an expiration date of May 1, 2007.

26. TCC submitted to NYSDEC a title V Operating Permit renewal application more than 180 days before the expiration of the Facility's title V Operating Permit, under 6 N.Y.C.R.R. § 621.13(a) and Condition 3 of the title V Operating Permit.

27. The Facility's title V Operating Permit includes as applicable requirements the Part 214 NY SIP provisions cited to in this Order.

28. From April 13, 2009 through April 21, 2009, EPA inspectors conducted a full compliance evaluation at the Facility (EPA Inspection) to assess TCC's compliance with all applicable Clean Air Act requirements.

29. On September 8, 2009, EPA issued TCC a Section 114 Request for Information, Reference Number CAA-02-2009-1475 (114 Letter).

30. On October 9, 2009, TCC provided EPA with its responses to the above-referenced 114 Letter.

31. Question 8.a. of the 114 Letter required TCC to state whether the quench towers at the Facility have any baffles.

32. During the EPA Inspection, and in TCC's response to Question 8.a. of the 114 Letter, TCC indicated that the two quench towers at the Facility are not equipped with any baffles.

33. Question 9 of the 114 Letter required TCC to provide copies of records of all analyses done pursuant to Section 214.5(b) of Part 214 during the past five (5) years, regarding concentrations of total dissolved solids (TDS) in the quench water.

34. In its response to Question 9 of the 114 Letter, TCC provided results of the analyses that were done on June 28, 2005, June 23, 2006, June 15, 2007, June 18, 2008, and June 18, 2009. TCC's results indicated that on these dates, three (3) samples of make-up water from the quench tower were obtained at 15-minute intervals to determine compliance with the 1,600 mg/l TDS limit in Part 214.

35. On December 7, 2009, EPA issued a Notice of Violation (NOV) to TCC regarding the alleged New York SIP violations that are the subject of this Order.

36. In a letter dated December 18, 2009, TCC's counsel stated that "TCC completed the reinstallation of a baffle system on the wet quench towers at its coke oven battery on November 16, 2009." This letter also stated that "TCC will comply

with the requirements established by 6 NYCRR Section 214.5(b) concerning the sampling and analysis of quench tower make up water to demonstrate compliance with the total dissolved solid concentration limits set forth in that regulation."

37. From January 25, 2010 through January 27, 2010, EPA conducted a follow-up compliance evaluation at the Facility (Follow-up Inspection).

38. During the Follow-up Inspection, EPA observed that TCC has installed wooden slats at the top opening of both quench towers, which TCC indicated are "baffles."

Conclusions of Law and Findings of Violation

39. From the Findings of Fact set forth above, EPA finds that Respondent is a "person" within the meaning of Section 302(e) of the Act.

40. From the Findings of Fact set forth above, EPA finds that Respondent is the owner and/or operator of a by-product coke oven battery facility.

41. From the Findings of Fact set forth above, EPA finds that Respondent is subject to 6 N.Y.C.R.R. Part 214 (By-Product Coke Oven Batteries).

42. From the Findings of Fact set forth above, EPA finds that Respondent operated the two wet quench towers of its coke oven battery without baffle systems designed to effectively reduce particulate emissions during quenching, in violation of Section 214.5(a) of Part 214, and the condition in the Facility's title V

Operating Permit that includes this EPA-approved SIP rule as an applicable requirement.

43. From the Findings of Fact set forth above, EPA finds that on five (5) occasions between June 28, 2005 and June 18, 2009, Respondent failed to determine its compliance with the 1,600 mg/l TDS limit in Part 214 by taking the arithmetic average of the TDS concentrations of each of four (4) samples of make-up water obtained at 15-minute intervals, in violation of Section 214.5(b) of Part 214, and the condition in the Facility's title V Operating Permit that includes this EPA-approved SIP rule as an applicable requirement.

Order

In concurrence with the Findings of Fact and Conclusions of Law above, pursuant to Sections 113(a)(1) and 114(a) of the Act, IT IS DETERMINED AND ORDERED that:

I.

The provisions of this Compliance Order shall apply to Respondent and to its officers, agents, servants, employees, successors and to all persons, firms and corporations acting pursuant to, through or for Respondent.

II.

By the effective date of this Order, Respondent shall ensure that each of the Facility's two quench towers are operated with a baffle system that is designed to effectively reduce particulate emissions during quenching, pursuant to Section 214.5(a) of Part

214 and the condition in the Facility's title V Operating Permit that includes this EPA-approved SIP rule as an applicable requirement.

III.

Within 21 days after the effective date of this Order, Respondent shall submit, for EPA review, engineering drawings that show the design of the current baffle systems for each of the Facility's two quench towers; a detailed engineering analysis regarding the baffle systems' effectiveness in reducing particulate emissions during quenching; and an operations and maintenance plan for such baffle systems, to demonstrate that each baffle system complies with Section 214.5(a) of Part 214 and the condition in the Facility's title V Operating Permit that includes this EPA-approved SIP rule as an applicable requirement.

IV.

By the effective date of this Order, Respondent shall ensure that four (4) samples from the quench tower make-up water are taken, and that the arithmetic average of the four (4) samples is used, to determine its compliance with Section 214.5(b) of Part 214 and the condition in the Facility's title V Operating Permit that includes this EPA-approved SIP rule as an applicable requirement.

V.

Within 30 days of the effective date of this Order, Respondent shall take samples from the quench tower make-up water in accordance with Section 214.5(b) of Part 214 and IV, above, to determine whether it is complying with the 1,600 mg/l limit in Section 214.5(b) and the Facility's title V Operating Permit, and shall submit the results of such

sampling to EPA.

VI.

All documents, reports, and results required by this Order shall be submitted to:

Kenneth Eng, Chief
Air Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway - 21st Floor
New York, New York 10007-1866

Business Confidentiality

Respondent may assert a business confidentiality claim covering part or all of the information this Order requires only to the extent and in the manner described in 40 C.F.R. § 2.203. EPA will disclose information submitted under a confidentiality claim only as provided in 40 C.F.R. Part 2, Subpart B. See 41 Fed. Reg. 36,902 (1976). If Respondent does not assert a confidentiality claim, EPA may make the information available to the public without further notice to Respondent.

Enforcement

Section 113(a)(3) of the Act authorizes EPA to take any of the following actions in response to Respondent's violation(s) of the Act:

- bring a civil judicial action pursuant to Section113(b) of the Act for injunctive relief and/or civil penalties up to $25,000 per day for each violation, and adjust the maximum penalty provided by the Act up to $27,500 per day for each violation that occurs from January 30, 1997 through March 14, 2004; $32,500 per day for each violation that occurs from March 15, 2004 through January 12, 2009; and $37,500 per day for each violation that occurs after January 12, 2009, in accordance with the Debt Collection Improvement Act, 31 U.S.C. 3701 et seq. (DCIA), and 40 C.F.R. Part 19, promulgated pursuant to the DCIA; or

- issue an administrative penalty order pursuant to Section 113(d) of the Act, for civil penalties, and adjust these penalties in accordance with the DCIA and Part 19, as stated above.

In addition, for any person who knowingly violates any requirement or prohibition of the SIP for more than thirty (30) days after date of the issuance of a NOV, Section 113(c) of the Act provides for criminal penalties or imprisonment, or both. Under Section 306 of the Act, the regulations promulgated thereunder (40 C.F.R. Part 15), and Executive Order 11,738, facilities subject to federal contracts, grants and loans must be in full compliance with the Act and all regulations promulgated pursuant thereto. Violation of the Act may result in the subject facility, or other facilities owned or operated by Respondent, being ineligible for participation in any federal contract, grant, or loan program.

Failure to comply with this Order may result in an administrative or civil action for appropriate relief as provided in Section 113 of the Act. EPA retains full authority to enforce the requirements of the Act, for all periods of non-compliance including those covered in this Order, and nothing in this Order shall be construed to limit that authority. Furthermore, the United States may seek fines and/or imprisonment of any party who knowingly violates the Act or an Order issued pursuant to Section 113 of the Act. Upon conviction, any facility owned by such party may be declared ineligible for federal contracts, grants and loans. Section 306; 40 C.F.R. Part 15; and Executive Order 11738.

Penalty Assessment Criteria

Section 113(e)(1) of the Act states that if a penalty is assessed pursuant to Sections 113 or 304(a) of the Act, the Administrator or the court, as appropriate, shall, in determining the amount of the penalty to be assessed, take into consideration the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require.

Section 113(e)(2) of the Act allows the Administrator or the court, as appropriate, to assess a penalty for each day of violation. In accordance with Section 113(e)(2) of the Act, EPA will consider a violation to continue from the date the violation began until the date Respondent establishes that it has achieved continuous compliance. If Respondent proves that there was an intermittent day of compliance or that the violation was not continuous in nature, then EPA will reduce the penalty accordingly.

Effective Date and Opportunity for Conference

Pursuant to Section 113(a)(4) of the Act, Respondent may request a conference with EPA concerning the violation(s) alleged in this Order. This conference will enable Respondent to present evidence bearing on the finding of violation, on the nature of the violation, and on any efforts it may have taken or it proposes to take to achieve compliance. Respondent may arrange to have legal counsel.

Respondent's request for a conference must be confirmed in writing within ten (10) days of receipt of this Order. If the requested conference is held, the Order shall become effective ten (10) days after the conference is held.

If Respondent does not request a meeting within ten (10) days of receipt of this Order, the Order shall become effective ten (10) days from its receipt. The request for a conference, or other inquiries concerning this Order, should be made in writing to:

Erick Ihlenburg
Office of Regional Counsel – Air Branch
U.S. Environmental Protection Agency – Region 2
290 Broadway – 16th Floor
New York, NY 10007-1866
(212) 637-3250

Notwithstanding the effective date of this Order and opportunity for conference, Respondent must comply with all applicable requirements of the Act.

Issued: FEBRUARY 4, 2010

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2

To: Mr. James D. Crane, Owner & CEO
Tonawanda Coke Corporation
3875 River Road
Tonawanda, New York 14150-6507

cc: Mr. Mark L. Kamholz, Manager—Environmental Control
Tonawanda Coke Corporation
3875 River Road
Tonawanda, New York 14150-6507

Mr. Larry Stizman, RAPCE
New York State Department of Environmental Conservation
Region 9
270 Michigan Avenue
Buffalo, New York 14203-2999

Mr. Robert J. Stanton, P.E., Director
New York State Department of Environmental Conservation
Division of Air Resources
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625 Broadway, 2nd Floor
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Ms. Colleen McCarthy, Senior Counsel
New York State Department of Environmental Conservation
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625 Broadway, 14th Floor
Albany, New York 12233-5500

Ms. Maureen Brady, Associate Counsel—Legal Affairs
New York State Department of Environmental Conservation
Region 9
270 Michigan Avenue
Buffalo, New York 14203-2999

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ON **February 8, 2010, I** MAILED A TRUE COPY OF THE ATTACHED DOCUMENT BY **CERTIFIED MAIL-RETURN RECEIPT** REQUESTED, **ARTICLE NUMBERS 7002-2030-0006-5359-0905** POSTAGE PRE-PAID, UPON THE FOLLOWING PERSON(S):

Janes D. Crane, Owner & CEO
Tonawonda Coke Corporation
3875 River Road
Tonawonda, New York 14150-6507

Geraldo Villaran

Geraldo Villaran